IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2479 of 2001

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANAND ACHARYA ALIAS BHARAT KUMAR SADHU

Versus

STATE OF GUJARAT

Appearance:

MR HARDIK C RAWAL for Petitioner

MR P.D. BHATE, AGP, for Respondent

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 23/07/2004

ORAL JUDGEMENT

1.1 In this petition the petitioner has challenged the order dated 5.1.2001 passed by the respondent rejecting his Review Application and the order of removal dated 22.10.1999.

2.1 The petitioner was appointed as a Deputy Collector with effect from 30.3.1993. The petitioner married with one Bhavnaben Dave which resulted into divorce on 12.12.1989. Though there was no marriage, the sister of the earlier wife Smitaben alleged that the petitioner has married to Smitaben and there is a baby girl out of the said wedlock. The only evidence which has come on the record is that the name of the petitioner is mentioned in the birth certificate of the daughter. The allegation is that after the divorce with his earlier wife Bhavnaben and the subsisting marriage with Smitaben, he entered into marriage with Priyaben in which one daughter was born on 8.12.1994.

2.2 The petitioner has produced criminal proceedings being Criminal Case No.5094/92 wherein the petitioner was acquitted on 26th September 2000. Against the said judgement revision application came to be filed which also came to be dismissed. According to the petitioner the complaint was filed only with a view to malign the petitioner since he has divorced the sister of Smitaben.

3. An inquiry was initiated against the petitioner and ultimately his services were terminated by order dated 22.10.1999. Against the said order the petitioner preferred a Review Application which also came to be rejected. Hence the present petition has been filed.

4.1 Learned counsel for the petitioner submitted that the Inquiry Officer has partly held that the allegation No.1(b) is proved and allegation No.2 is also proved. It is on that basis the impugned order of removal was passed. Learned counsel submitted that on the date on which he made an application there was merely divorce and thereafter he had married the present wife.

4.2 According to the petitioner the only suppression of fact was that the criminal case was pending which was filed against him in the year 1992, which he ought to have disclosed. He submitted that no other illegality was shown from the record.

5.1 I have gone through the Inquiry Report and other materials which are available on record. The Inquiry Officer has not found the petitioner guilty of having married Smitaben or having any illicit relations with her. The date on which the petitioner had made application, he had already divorced Bhavnaben. There is nothing on record to establish that he has married Smitaben except showing his name in the birth certificate of the girl child. It might be possible that this was

done with a view to malign the petitioner as he had divorced Bhavnaben.

5.2 On the date of the application the only misconduct is non-disclosure about the criminal proceedings. However, ultimately the petitioner was acquitted in the criminal proceedings. The offence is not of such a serious nature which calls for removal of service on the ground of moral turpitude. Therefore the order of removal is required to be quashed and set aside. However, as the petitioner has not disclosed the fact about the criminal proceedings, such act warrants some punishment and the ends of justice would be served if a penalty of stoppage of two increments with future effect is imposed upon the petitioner.

6. In the premises aforesaid, the petition is partly allowed. The impugned order dated 5.1.2001 at Annexure-A and the order of removal dated 22.10.1999 at Annexure-B to the petition are quashed and set aside. The petitioner shall be reinstated in service with continuity of service but without backwages on or before 1st September 2004, failing which the petitioner shall be entitled to the salary from that day. However, as stated above, the respondent shall effect a penalty of stoppage of two increments with future effect in the pay of the petitioner. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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